



MONTGOMERY COUNTY ETHICS COMMISSION

ADVISORY OPINION

The Montgomery County Ethics Law (“the Ethics Law”)¹ permits any person who is subject to the law (or certain other County ethics provisions) to ask the Montgomery County Ethics Commission (the Ethics Commission) for an advisory opinion on the meaning or application of any of these laws to them.²

This advisory opinion was requested by a citizen member of the Montgomery County Fire and Rescue Commission concerning the relatively recent enacted political activities provisions of the Ethics Law (the “Political Activities Law”).³

QUESTIONS PRESENTED

The request presented the following questions:

1. What is **the official’s jurisdiction** [*sic*] of a Fire and Rescue Commissioner (presumably in regard to the Commissioner’s “quasi-judicial” role)?
2. Is the official’s jurisdiction limited to those parties directly involved in an appeal before the MCFRC?
3. Does the official’s jurisdiction (presumably in regard to the Commission’s “quasi-judicial” role) extend to anyone and everyone associated directly or indirectly with the Montgomery County Fire and Rescue Service—including members of private, local Volunteer Fire and Rescue Department corporations, spouses, family members or other relatives?
4. Is there a firewall between the MCFRC’s quasi-judicial role and its executive and legislative duties in regard to prohibited political activities?

¹ MONT. CO. CODE, Chapter 19A. (All statutory references are to this law.)

² See §19A-7(a). Unless the requester authorizes disclosure, the Commission must keep the name of the requester confidential. *Id.* Nevertheless, the Commission must: (a) publish each opinion when it is issued unless the Commission finds that the privacy interest of a public employee or other person clearly and substantially outweighs the public’s needs to be informed about Commission actions; (b) at least annually must publish a list of all unpublished opinions, with the reason why each opinion was not published; and (c) take all reasonable steps consistent with making the opinion useful for public guidance to keep confidential the identity of any person who is affected by the opinion request. §19A-7(b).

³ Ch. 23, Laws of Montgomery County 2001 (Bill 11-01) (codified at MONT. CO. CODE, §19A-16(A)).

5. In any event, is “passive” support of a political candidate a prohibited activity? Is it permissible to display bumper stickers?
6. Is there a line distinguishing the degree of permissible political activity? Is the display of lawn signs a more active form of support of a political candidate than the mere display of bumper stickers?
7. Is it permissible for my name to be listed by a political candidate as a supporter?
8. Am I prohibited as a Fire and Rescue Commissioner from writing to others encouraging support of a political candidate for political office? To all others? To those in the official’s jurisdiction? To all those associated directly or indirectly with Montgomery County Fire and Rescue Service? Only to those directly involved in an appeal being heard by the MCFRC?

THE POLITICAL ACTIVITIES LAW

In pertinent part, the Political Activities provisions of the Ethics Law provide:

(a) A County quasi-judicial official must not:

- (1) solicit or accept from a person within the official’s jurisdiction a financial contribution for any political candidate, political organization or ballot question (other than a ballot question which directly affects the official’s agency); or
- (2) solicit from a person within the official’s jurisdiction an endorsement of or opposition to a political candidate.

For these purposes, the law defines “person within the official’s jurisdiction” to mean an individual who:

- (A) is registered, or is required to register, as a lobbyist on a matter that is or could be considered by the official;
- (B) owns or operates a business that is regulated by the official;
- (C) does business with or has a matter pending before the official’s agency; or
- (D) has an identifiable economic interest, different from that of the general public, that the official may substantially affect in performing the official’s duties.⁴

ADVICE

At the request of the Ethics Commission, the Office of the County Attorney provided the Commission with legal advice on the construction and application of the newly enacted law. Based on that legal advice, a copy of which is attached, the Ethics Commission advised the requester as follows:

⁴ §19A-16A(b)(4).

1. The jurisdiction of a Fire and Rescue Commissioner is not limited to the Commissioner's "quasi-judicial" authority. It includes all the authority [ed.: of] the Commission—whether quasi-judicial, quasi-legislative (*e.g.*, rulemaking) or executive.
2. A Fire and Rescue Commissioner's jurisdiction is not limited to those parties directly involved in an appeal before the MCFRC.
3. A Fire and Rescue Commissioner's jurisdiction extends to anyone and everyone who is subject to the authority of the Fire and Rescue Commission.
4. There is no firewall between the MCFRC's quasi-judicial role and its executive and legislative duties in regard to prohibited political activities.
- 5 & 6. *Supporting* a political candidate is not a prohibited political activity. Only the *solicitation* of a financial contribution or the *solicitation* of an endorsement of or opposition to a political candidate is prohibited. Neither the display of lawn signs nor bumper stickers on private property is prohibited by the Political Activities Law.
7. An individual who is a Commissioner may permit a political candidate to list the name of that individual as a supporter, but may not permit the use of his or her name in connection with the solicitation of a financial contribution or an endorsement.
8. A Fire and Rescue Commissioner may not "*encourage*" support of a particular candidate for political office, whether in writing, orally, electronically, or otherwise, from anyone within the Commissioner's jurisdiction, *i.e.*, anyone who is subject to the Commissioner's authority. For these purposes, "*encouraging*" support constitutes "*soliciting*" support.

FOR THE ETHICS COMMISSION:

[signed]

Elizabeth K. Kellar, Chair

July 16, 2002